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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

In re the Marriage of VERED MARASH and ZACHARY WHITMAN.

H036639 (Santa Clara County Super. Ct. No. FL-105-128865)

VERED MARASH,

Appellant,

v.

ZACHARY WHITMAN,

Respondent.

Vered Marash appeals from a judgment resolving issues over spousal and child support in proceedings arising from the dissolution of her marriage to respondent Zachary Whitman. Vered contends that the family court abused its discretion by using Zachary's actual rather than imputed income to calculate support, by ordering her to reimburse Zachary for his overpayment of temporary support, by refusing to deviate upward from

¹ For ease of reference, we will refer to the parties by their first names, as do the parties in their appellate briefs. (See *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

guideline child support, and by failing to consider fully the parties' relative circumstances in determining permanent spousal support. We find no abuse of discretion in the court's support orders, with the exception of a Dissomaster calculation error both parties recognize. We further agree with Vered's final contention, that the court failed to make findings on Vered's request for pendente lite attorney fees under Family Code section 2030. We will therefore remand this matter for recalculation of child support and for consideration of attorney fees under section 2030.

Background

The parties separated in August 2005 after nearly 15 years of marriage. They had two sons, born in 1991 and 1998. On September 7, 2005, Vered petitioned for dissolution of the marriage. The parties initially stipulated to an order providing that Zachary would pay Vered temporary spousal support of \$2,299 per month and temporary child support of \$3,027 per month, for a combined monthly support award of \$5,326. At that time Zachary was receiving funds from his mother in addition to income from his job as an insurance sales agent, having been forced to enter this profession when his family retail business closed at the end of 2003. Vered, meanwhile, had an engineering degree but was suffering from chronic health conditions that had forced her to stop working as a consultant and project manager in November 2000.

In August 2006, Zachary moved to modify temporary child and spousal support, explaining that he was no longer receiving monetary gifts from his mother. Upon a request by Vered and a vocational assessment by Tim G. Harper, M.A., the Honorable

² All further statutory references are to the Family Code.

³ The temporary child support figure assumed that the time the children spent with Zachary was five percent. But on October 7, 2005, the court entered a stay-away order preventing Zachary from having contact with either of the children. In July 2007 he lost legal and physical custody, and in December 2008 court-ordered "reconnection therapy" was terminated. Thereafter Zachary had no visitation with his sons.

Derek Woodhouse imputed income to Zachary of \$55,000 per year (about \$4,583 per month), along with investment income of \$833 per month and \$3,500 "as the value of reduced living expenses" per month because he was living with his mother without paying rent. The resulting order, filed on February 14, 2007, was for total support of \$4,839 per month beginning December 20, 2006. Zachary appealed from Judge Woodhouse's order.

In February 2007 Zachary's mother died, leaving her home and investments to him. On August 6, 2007 Vered moved to modify child and spousal support and reallocate the children's expenses. On October 11, 2007, the parties stipulated to an increase in combined child support to \$2,902 and an increase in temporary spousal support to \$2,308, retroactive to August 6, 2007.

Zachary's appeal was determined by this court's opinion on August 15, 2008, which found error in the imputation of income attributable to the expense-free housing (H031329). The case was remanded to the family court to enable it to decide "whether the value of reduced expenses by virtue of [Zachary's] living arrangement should be considered a 'special circumstance' justifying deviation from guideline child support under section 4057."

On March 20, 2009, Zachary moved to modify child and spousal support as well as the division of expenses for the children. In his accompanying declaration he reported that he had changed employers, resulting in a better opportunity for mentoring and advancement but at a lower initial income, because he could no longer receive residual commissions from his previous employer. Zachary cited declining market conditions, a "huge asset drain" from litigation costs and attorney fees, and the "complete collapse" of one of his investments as reasons the amount of imputed income was no longer realistic. In addition, his older son, though not yet 18 years old, was in college on a scholarship and had a large amount of his own money from gifts that could be used for expenses. Zachary further questioned the amount and necessity of the children's expenses, 75

percent of which Vered expected him to pay but which should be included in child support. Vered was not working, but Zachary believed that she received about \$2,000 per month in Social Security disability benefits.

On October 2, 2009, Vered moved for attorney fees and costs and for "enforcement and determination of arrearages" arising from the October 11, 2007 stipulation and order regarding health care costs and other expenses for the children. She also requested \$5,792.94 for arrearages accumulating between April and October 2009.

The motions were heard over several days in July 2010 by the Honorable Carrie A. Zepeda. Among the witnesses providing testimony were Harper, Vered's vocational expert who had examined Zachary; Dr. Richard Lee, Vered's primary care physician; Cheryl Foden, Zachary's vocational expert who had examined Vered and reviewed Harper's report; the parties' forensic accounting experts; and both parties.

The family court issued a lengthy statement of decision explaining its analysis of all the material issues presented. For the "remand period" between December 2006 and August 2007 Judge Zepeda followed this court's direction to determine whether it was appropriate to deviate from guidelines in determining child and spousal support and arrearages claimed by Vered. She concluded that Zachary's mortgage-free situation "did not contribute additional income from which to calculate or pay additional support."

After paying support, his remaining income was insufficient to meet his expenses, and the court declined to impute income as urged by Harper, Vered's vocational expert.

Consequently, Zachary had been overpaying support during this period in the amount of \$18,952. Deducting from that figure the expense arrearages, the court calculated \$2,478.22 to be the amount Vered owed Zachary.

Addressing Vered's August 6, 2007 motion, the court noted that the October 11 stipulation had reserved the right to modify the amount of temporary support pending the appellate opinion. Notwithstanding Zachary's mortgage-free situation, he had, the court observed, continued "to lead a modest lifestyle." Vered had not produced any evidence

demonstrating that applying the guideline formula would be unjust or inappropriate because of the housing benefit. Consequently, the court found no reason to deviate from guideline support in the amount provided in the October 2007 stipulation.

Judge Zepeda then turned to Zachary's March 20, 2009 motion to modify child and spousal support. Applying section 3651⁴ and Marriage of Williams (2007) 150 Cal.App.4th 1221, 1234, the court found that Zachary had presented evidence of changed circumstances since 2006, when Judge Woodhouse had imputed income: his mother had died in February 2007, he had lost legal and physical custody of his sons in a final custody order in July 2007, the economic downturn had discouraged potential clients from buying insurance, and he had struggled with depression and other personal difficulties, including the dissolution litigation. In addition, the change in employers in December 2008 meant that he had lost residual commissions from the policies sold in his previous employment. The court further noted Vered's receipt of Social Security benefits and Zachary's loss of investment income when his Panaseca stock became worthless. It declined to penalize Zachary for the job shift or his inheritance; the reduced income was likely to be temporary because the job move was advantageous, and there was no evidence that the inheritance had adversely affected his "motivation or desire to earn as much as he could from his work or that the inheritance caused the downturn in his earnings."

In short, Zachary had never achieved the income level Harper had projected for him as his earning capacity or opportunity. Consequently, Judge Zepeda concluded, changed circumstances warranted application of actual income rather than imputed

⁴ This provision authorizes the family court to modify support if necessary upon a showing of changed circumstances, although spousal support may not be modified if an agreement between the parties specifically provides to the contrary.

income. Zachary's payment of \$34,826 thus resulted in the overpayment for which he was entitled to reimbursement.

The court next examined the issue of permanent support. Devoting some 16 pages of the statement of decision to this issue, Judge Zepeda reviewed the documentary and testimonial evidence pertaining to all of the factors listed in section 4320. She acknowledged that the parties' younger son had to take medication during the day. Vered also had serious medical issues, suffering from chronic conditions involving the endocrine system. She had once been a consultant and project manager for Hewlett-Packard, but when she developed health problems she left the company and had not been employed since 2000. Nevertheless, Judge Zepeda determined that there was insufficient evidence regarding Vered's ability to work without compromising the son's or her own medical needs. Consequently, Vered was directed to undergo an evaluation by the Department of Rehabilitation "to see what sort of work she can do, if any." That information would help the court determine whether she would be able to work without interfering with her care of her son.

Both parties had suffered hardships— for Vered, her medical condition and that of the younger son; and for Zachary, the loss of a family business, custody of his sons, and his mother, all within a short period. The court found that notwithstanding Vered's medical issues, she had "an obligation to support herself and her children" and therefore was ordered to cooperate with the recommendations made by the rehabilitation counselor. Zachary, on the other hand, had failed to earn the amount Harper had attributed to him as his earning capacity, though he worked 70 hours a week and had taken several courses not only to learn the products offered by his new company but also to develop a more successful professional style. The court found Harper's analysis to be "flawed" and his opinion "unreliable" in his estimate of Zachary's ability to earn \$70,000-\$80,000 a year. Thus, actual earnings from the new employer were the appropriate measure to be used in calculating support. As for inherited stock, the court noted that Zachary had been forced

to sell some of it in order to pay property and estate taxes, capital gains taxes, support, and the cost of repairs on the home. Zachary's home was the "bulk" of his wealth, but it was an older home in need of repairs; it was the Atherton location that accounted for much of its value. Besides maintaining a modest lifestyle, Zachary supplemented his income by renting rooms in his home. That income amounted to \$2,133 per month after deducting utilities and depreciation. The court determined that the appropriate amount of guideline support beginning July 2010 was \$970 per month for support of the younger son (the older son had reached 18) and \$1,150 per month for spousal support.

Finally, the court reached the issue of attorney fees, which Vered had requested under former section 3557, under sections 2030 and 2032, and as sanctions under section 271. The judge summarized the relative merits of the parties' arguments over the five motions she had had to address. She concluded that both parties had succeeded on some issues and failed on others. Overall, "[t]he attorneys were equally competent and demonstrated the necessary work ethic to litigate the issues." Accordingly, the parties were ordered to pay their own attorney fees.

Judgment was entered on January 4, 2011, incorporating the court's statement of decision. Vered filed a timely notice of appeal.

Discussion

1. Standard and Scope of Review

Representing herself on appeal, Vered contends that the family court abused its discretion when it (1) declined to impute income to Zachary; (2) ordered her to reimburse Zachary for his overpayment of temporary support; (3) inadequately considered the factors that determine the amount of permanent support; (4) rejected her request to deviate from guideline child support in light of the special circumstances presented; and (5) denied her request for attorney fees. She correctly observes that a court's exercise of discretion in deciding support issues must be consistent with the applicable legal principles and supported by substantial evidence. But our standard of review embraces

more than that simple statement. All of the court's decisions regarding support are reviewed for abuse of discretion. (*Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283.) This includes determinations of entitlement to and amount of temporary and permanent spousal support (*Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93; *Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443), imposing or denying attorney fees as section 271 sanctions (*Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1524), modifications of child support (*Marriage of Williams, supra,* 150 Cal.App.4th at pp. 1233-1234), and determining amounts of attorney fee awards under section 2030. (*Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1166.) Whether to impute income to the supporting spouse is necessarily a part of that exercise of the court's broad discretion in making and modifying support awards. (*Marriage of Sorge* (2012) 202 Cal.App.4th 626, 642-643; *Marriage of Cheriton, supra,* 92 Cal.App.4th at p. 301; *Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753.)

In exercising its discretion over child support, the family court has a duty " ' "to exercise an informed and considered discretion with respect to the [parent's child] support obligation " [Citation.] Furthermore, "in reviewing child support orders we must also recognize that determination of a child support obligation is a highly regulated area of the law, and the only discretion a trial court possesses is the discretion provided by statute or rule. . . . " [Citation.] In short, the trial court's discretion is not so broad that it "may ignore or contravene the purposes of the law regarding . . . child support. . . . " [Citation.]' " (*Marriage of Williams, supra*, 150 Cal.App.4th at p. 1234, quoting *Marriage of Cheriton, supra*, 92 Cal.App.4th at p. 283; see also *Marriage of Bodo* (2011) 198 Cal.App.4th 373, 384.) Consequently, the court must adhere to the strong public policy of this state by following the statewide uniform guidelines set forth in sections 4050-4076, including the mathematical formula prescribed in section 4055, which is deemed to be "presumptively correct." (*Marriage of Williams, supra*, 150 Cal.App.4th at pp. 1237.)

Spousal support awards likewise are controlled by the applicable statutory law notably, the list of potentially relevant circumstances outlined in section 4320. In applying these factors to determine the appropriate amount of spousal support, the court possesses " 'broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it.' [Citation.] In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the 'court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities.' [Citation.] Furthermore, the court does not have discretion to ignore any relevant circumstance enumerated in the statute. To the contrary, the trial judge must both recognize and *apply* each applicable statutory factor in setting spousal support. [Citations.] Failure to do so is reversible error." (Marriage of Cheriton, supra, 92 Cal.App.4th at p. 304; Marriage of Kerr, supra, 77 Cal.App.4th at p. 93.) The same rules govern the exercise of discretion in determining requests for attorney fees in family law cases, where such awards are subject to the guidelines set forth in sections 2030 and 2032. (Marriage of Cheriton, supra, 92 Cal.App.4th at p. 315.)

On appeal, however, our analysis is controlled by different standards. Whether our focus is child support, spousal support, or attorney fees, we may not substitute our judgment for that of the lower court, and must affirm that court's decision unless we conclude, after viewing all the evidence and indulging in all reasonable inferences in favor of the judgment, that "no judge could have reasonably made the challenged decision." (*Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1046-1047 [child support]; see also *Marriage of Bodo*, *supra*, 198 Cal.App.4th at p. 384 [sanctions]; *Marriage of Blazer*, *supra*,176 Cal.App.4th at p. 1443 [spousal support].) Accordingly, we resolve any conflicts in the evidence in favor of the lower court's determination, and all factual

findings must be upheld if they are supported by any substantial evidence. (*Marriage of Cryer, supra,* 198 Cal.App.4th at p. 1047; see also *Marriage of Schlafly, supra,* 149 Cal.App.4th at p. 753 [imputation of income].)

2. Imputation of Income

Vered's first contention, challenging the court's decision to base support on Zachary's actual income rather than earning capacity, forms the predicate of some of her other assertions. In her view, the family court "reversed" the previous decision by Judge Woodhouse, which this court upheld, to impute income to Zachary based on his earning capacity. In altering the "method" of determining income for the remand period, Vered maintains, the court abused its discretion "because there was substantial evidence supporting the *continued* imputation of income at earning capacity." She recalls Harper's report and testimony and asserts that Zachary did not show that he had the "ability to work and opportunity to work"— she means, we presume, at a higher income level.

But the existence of substantial evidence supporting the *appellant's position* does not translate to a reversal of the lower court's decision. Our function is not to replace the family court's exercise of discretion with our own by accepting evidence the court has rejected; we are required to uphold the judgment if any substantial evidence supports the *court's decision*. The credibility of Harper's analysis was part of that decision and thus is not for us to judge in the first instance. (*Marriage of Calcaterra and Badakhsh* (2005) 132 Cal.App.4th 28, 34.) Judge Zepeda found Harper's opinion regarding Zachary's earning capacity to be unreliable and flawed. Whether we might have reached a different conclusion is not material, as we are not permitted to reweigh the evidence. It is the family court in the first instance which "sits as trier of fact and . . . is called upon to determine that a witness is to be believed or not believed. This is the nature of fact finding." (*In re Marriage of Greenberg* (2011) 194 Cal.App.4th 1095, 1099.) We must view such determinations in favor of the order. (*In re Marriage of Slivka* (1986) 183 Cal.App.3d 159, 162-163.) As Judge Zepeda gave a rational explanation for her view of

the evidence and for the conclusions she drew from the facts presented, we have no basis for finding an abuse of discretion in using Zachary's actual income in these circumstances.

3. Overpayment of Temporary Support

As noted earlier, the family court found that Zachary had overpaid spousal and child support during the remand period (December 2006-August 2007) and, after deduction for arrearages, was therefore entitled to reimbursement of \$2,378.22. Vered contends that in making this determination the family court did not consider all the factors required by section 3653, ⁵ particularly the hardship this order would create for her and the children. We find no support for this assertion in the record. On the contrary, the court expressly acknowledged section 3653. Following this court's directions, it addressed the question of whether Zachary's reduced expenses for mortgage-free housing justified an upward adjustment to guideline support. The court's conclusion was based on its findings that the absence of a mortgage obligation "did not contribute additional income" for purposes of calculating support and that Zachary was unable to pay his expenses after paying support. The court further found no evidence that the children lacked adequate space in their home with Vered, nor any other evidence "that application of the [guideline] formula would be unjust or inappropriate because of the alleged housing disparity." Vered does not refute these factual conclusions. As discussed in subsequent sections, the record discloses every indication that the court thoroughly reviewed each party's income, expenses, assets, and standard of living in determining the correct amount of support during the remand period. We see no abuse of discretion in the court's conclusion that Zachary had overpaid both child and spousal support and was

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⁵ Subdivision (d)(1) through (4) of the section requires the court to consider the amount to be repaid, the duration of the overpayment, the impact on the obligee and "other facts or circumstances that the court deems relevant."

therefore entitled to reimbursement. (Cf. *In re Marriage of Dandona & Araluce* (2001) 91 Cal.App.4th 1120, 1126 [no showing of failure to consider section 3653 in ordering reimbursement for husband's overpayment of support].)

4. Permanent Spousal Support

In a similar vein Vered contends that the court abused its discretion when it determined that \$1,150 per month was the correct amount of spousal support for Vered beginning July 2010. In her view, the court "did *not* fully take into account Zachary's *earning capacity*, earned and unearned income, assets and standard of living." In addition, she argues, the court did not take into account the parties' relative needs and obligations, Zachary's access to "other financial assets" to meet his needs, the standard of living established during the marriage, or the financial impact of a reduction in permanent support from the previous level of temporary support.

We disagree. As noted above, in setting permanent support the court was required to consider the factors enumerated in section 4320. (See *Marriage of Cheriton*, *supra*, 92 Cal.App.4th at pp. 302-303.) It clearly did so, and in meticulous detail. The court described the nature, symptoms, and effects of Vered's medical conditions, including diabetes, hypothyroidism, adrenal fatigue, Sjogren's Syndrome, and fibromyalgia, in addition to certain food sensitivities. Yet the court was unwilling to rule out the possibility that Vered could sustain employment to some degree, and for that reason it ordered her to undergo an evaluation by a rehabilitation counselor. The court did address the question of Zachary's earning capacity, the value of his asset in his home, and his lifestyle, which was "modest." The court specifically acknowledged the previous lifestyle the parties had enjoyed, but it also described the "huge reductions in their earnings" attributable to Vered's medical conditions and the loss of Zachary's family

⁶ In 2000 Zachary earned \$97,000 and Vered earned \$138,714. By 2005 Vered was earning nothing, and Zachary's income had "plummeted" to \$36,000 per year.

business, which forced him to enter a new profession. Those "major impacts" on their marital standard of living translated to \$3,155 per month. The court described the hardships both parties had experienced — Vered's medical challenges, her burden of caring for her son with his medical issues, and Zachary's loss of his business, his sons, and his mother within a short period, and the attendant change of career late in life. The court explicitly stated that it had taken these facts into account in calculating child and spousal support.

Vered does not explain how the court's calculation of Zachary's income was "inaccurate" or why the standard of living should be assumed to be at the level it was in 2000. And although she complains that Zachary's assets were not considered, she does not assign error in the court's detailed description of the value of her home, Zachary's home, her bank balances and stock holdings, and Zachary's stock holdings. The court's statement of decision reflects a thorough examination of all the circumstances presented with scrupulous attention to and explanation of all of the factors identified in section 4320. The voluminous documentary evidence and extensive hearing testimony supported the court's findings. Vered does not demonstrate otherwise.

5. Deviation from Child Support Guidelines

Section 4057, subdivision (a), establishes a presumption that the guideline formula is "the correct amount of child support to be ordered." A party may rebut this presumption by showing circumstances that make application of the formula "unjust or inappropriate." (§ 4057, subd. (b).) Vered attempted to show that an upward adjustment in support was necessary because Zachary was living in a home with no mortgage payment. She renews that argument on appeal. Based on this "disparity in housing," she believes, "Zachary has economic security and freedom not enjoyed by Vered and minor child" and therefore should pay more than the guideline formula prescribes.

But Judge Zepeda specifically addressed the implications of Zachary's "mortgage free home" on the statutory presumption that the guideline formula prescribed the correct

amount of support. She observed that the lack of a mortgage "did not contribute additional income from which to calculate or pay additional support." She noted that even while Zachary rented space in his home to help pay expenses and lived modestly, his income was still insufficient to pay support. Accordingly, not only had Vered failed to convince the court that application of the guideline formula would be unjust or inappropriate, but the court found that it would be unjust and inappropriate *not* to apply the formula in this case.

Other than the asserted housing disparity, Vered does not offer reasons the court should have departed from the guideline formula in making the child support calculation. Because she failed to show error in the application of the statutory guidelines, reversal is not required on that basis.

6. Dissomaster Entry Errors

Vered next calls attention to the court's omission of rental income for the period of November 2009 through June 2010. Zachary concedes this error, but he maintains that it is not prejudicial because the court overstated his rental income in any event, by taking his expert accountant's testimony out of context. Because both parties agree that error occurred, we will allow the court to re-examine its rental calculations on remand and make any support adjustments the court finds necessary as a result.

7. Attorney Fees

Vered's request for attorney fees was made under both the sanctions provision, section 271, and the need-based provision, section 2030. By the time the judgment was filed in January 2011, the 2010 amendment of section 2030 was in effect. Subdivision (a)(1) of that section provides, in pertinent part: "In a proceeding for dissolution of marriage . . . the court shall ensure that each party has access to legal representation,

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⁷ Although Vered also based her request on section 3557, she does not invoke this provision on appeal and we will therefore not address it.

including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding."

Section 2032 assists the court in applying section 2030 by authorizing the fee award "where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties. [¶] (b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances." (§ 2032, subds. (a), (b).)

Section 2032 "not only requires that the court consider the financial resources of each party, but also requires a broader analysis of the parties' relative circumstances." (*In*

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⁸ Section 4320 "presents a near-exhaustive list of factors that are to go into a spousal support award To be sure, not all section 4320 factors will be relevant all the time (hence the 'to the extent relevant' language in section 2032). But obviously a number of section 4320 factors will *usually* bear on a pendente lite fee order. These surely include earning capacity (subd. (a)); ability to pay, taking into account such things as assets and standard of living (subd. (c)); respective needs (subd. (d)); obligations and assets (subd. (e)); age and health (subd. (h)); and the overall balance of hardships (subd. (k))." (*Alan S., Jr. v. Superior Court* (2009) 172 Cal.App.4th 238, 253.)

re Marriage of Cryer, supra, 198 Cal.App.4th at p. 1056.) "[A] pendente lite fee award should be the product of a nuanced process in which the trial court should try to get the 'big picture' of the case, i.e., 'the relative circumstances of the respective parties' as the statute puts it. (§ 2032, subd. (a).) Conversely, determination of a pendente lite attorney fee order is definitely not a truncated process where the trial court simply (a) ascertains which party has the higher nominal income relative to the other, and then (b) massages the fee request of the lesser-income party into some manageable amount that feels like it will pass an abuse of discretion test." (Alan S., Jr. v. Superior Court, supra, 172 Cal.App.4th at p. 254.)

Vered asserts an abuse of discretion in the family court's denial of her attorney fees under section 2030 and 271. The section 271 claim is not accompanied by argument beyond the bare statement that the court erred, and we therefore need not discuss it further. Zachary, on the other hand, focuses on section 271 and does not discuss Vered's primary argument under section 2030, except to contend that she waived it by failing to object to the court's omission of this subject in its statement of decision. At most Zachary suggests that we "may presume that the trial court reached the question of Vered's claim for fees under section[s] 2030 and 2032, and decided that issue adversely to her." We then should, according to Zachary, import the "findings in other contexts concerning the economic condition of the parties," which leads to the conclusion that no abuse of discretion occurred.

But the statute does not permit such implied findings or (more to the point) excuses for the lack of findings. Section 2030, subdivision (a)(2), as of January 1, 2011, requires the court to "make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an

attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward." Unlike the previous versions of this statute, which called for *consideration* of specified factors (income and needs of each party and other factors affecting ability to pay), subdivision (a)(2) now appears to insist on *express* findings on the parties' financial needs and abilities to secure legal representation.

Here it is apparent that the court focused on the issue of whether either party should be ordered to pay the other's attorney fees as sanctions under section 271. It did not, however, examine the merit of Vered's request under section 2030. While the family court has "considerable latitude to make a just and reasonable fee award" (*In re Marriage of Cryer, supra*, 198 Cal.App.4th at pp. 1054-1055), "its decision must reflect an exercise of discretion and a consideration of the appropriate factors." (*In re Marriage of Hatch* (1985) 169 Cal.App.3d 1213, 1219; accord, *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866.) Accordingly, the court was obligated to determine whether an award was necessary to "ensure that each party has access to legal representation," in "whatever amount [was] reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." (§ 2030, subd. (a)(1).) That determination would have necessarily been expressed in an articulation of the court's findings on whether an award was "appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." (§ 2030, subd. (a)(2).)

Here the court's statement of decision reflects no examination of the circumstances the court was required to consider under sections 2030 and 2032. We therefore remand this matter to enable the court to exercise its discretion, keeping in mind the policy expressed in section 2030 to "ensure that each party has access to legal representation" during the proceedings.

Disposition

The judgment is reversed. The matter is remanded for the limited purpose of
allowing the family court to (1) re-examine its Dissomaster calculations based on
accurate rental income to Zachary from November 2009 to June 2010 and (2) address and
resolve Vered's request for attorney fees under section 2030. The parties shall bear their
own costs on appeal.

	ELIA, J.	
WE CONCUR:		
RUSHING, P .J.		
GROVER, J. *		

^{*} Judge of the Monterey County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.